

1 William B. Rostov (State Bar No. 184528)
2 Tamara T. Zakim (State Bar No. 288912)
3 EARTHJUSTICE
4 50 California Street, Ste. 500
5 San Francisco, CA 94111
6 Tel: (415) 217-2000
7 Fax: (415) 217-2040
8 wrostov@earthjustice.org
9 tzakim@earthjustice.org

10 *Attorneys for Plaintiffs/Petitioners*
11 Center for Biological Diversity and Sierra Club

12 Hollin N. Kretzmann (State Bar No. 290054)
13 CENTER FOR BIOLOGICAL DIVERSITY
14 1212 Broadway, Ste. 800
15 Oakland, CA 94612
16 Tel: (510) 844-7133
17 Fax: (510) 844-7150
18 hkretzmann@biologicaldiversityorg

19 *Attorney for Plaintiff/Petitioner*
20 Center for Biological Diversity

21
22
23
24
25
26
27
28
IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CENTER FOR BIOLOGICAL DIVERSITY, *et al*,

Plaintiffs/Petitioners,

v.

CALIFORNIA DEPARTMENT OF
CONSERVATION, DIVISION OF OIL, GAS,
AND GEOTHERMAL RESOURCES, *et al*,

Defendants/Respondents,

AERA ENERGY LLC, *et al*,

Respondents-in-Intervention, and

WESTERN STATES PETROLEUM
ASSOCIATION, *et al*,

Respondents-in-Intervention.

Case No: RG15769302

ASSIGNED FOR ALL PURPOSES TO
JUDGE GEORGE C. HERNANDEZ, JR.
DEPARTMENT 17

**PLAINTIFFS' SEPARATE STATEMENT
OF UNDISPUTED FACTS AND RESPONSE
TO AERA ET AL.'S STATEMENT OF
UNDISPUTED FACTS**

Reservation No.: 1693517

Date: March 3, 2016
Time: 2:30 PM
Dept: 17

Action Filed: May 7, 2015
Trial Date: July 15, 2015

INTRODUCTION

Plaintiffs Center for Biological Diversity and Sierra Club (“Plaintiffs”) hereby offer the following response to Aera et al.’s (“Oil Companies”) Separate Statement of Undisputed Material Facts in Support of Motion for Summary for Adjudication, together with Plaintiffs’ Separate Statement of Undisputed Material Facts, pursuant to Cal. Code of Civil Procedure 437c(b)(3) and Cal. Rule of Court Rule 3.1350.

Oil Companies’ submission of “Undisputed Material Facts” in support of their Motion for Summary Adjudication (“motion”) is misapplied and improper in this summary adjudication proceeding. “Material facts” to be included in Statement of Undisputed Material Facts are those facts that “relate to the cause of action...or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion.” (Cal. Rule of Court Rule 3.1350.) Here, the subject of Oil Companies’ motion is the legal propriety of Plaintiffs’ claim for declaratory relief under the Administrative Procedure Act (“APA claim”). The motion, which asks this Court to exercise its discretion to dismiss Plaintiffs’ APA claim on the basis that the claim fails constitute an actual controversy and is unnecessary and improper (see, e.g., Motion at 3, 8), does not involve factual inquiries that “could make a difference in the disposition of the motion.” (Cal. Rule of Court Rule 3.1350.)

Instead, the disposition of Oil Companies’ motion turns on the form and scope of Plaintiffs’ claim for declaratory relief, as pled by Plaintiffs, and applicable issues of law. As Plaintiffs explain in their Opposition to Oil Companies’ Motion, filed concurrently with this response, Plaintiffs’ claim for declaratory relief under the APA, which challenges DOGGR’s violation of the APA in promulgating “Aquifer Exemption Compliance Schedule Regulations,” is the proper subject of declaratory relief, involves an actual controversy, is necessary, and should not be dismissed.

Significantly, Oil Companies brought their Motion for Summary Adjudication following this Court’s denial of their August 19, 2015 demurrer against Plaintiffs’ APA claim, but prior to the certification and lodging of an administrative record by DOGGR in this case and prior to any briefing on the merits. Thus, rather than being informed by merits briefing, Oil Companies’ motion takes the form of a late (and improper) demurrer, which challenges Plaintiffs’ APA claim as failing

1 to constitute an actual controversy based on the contents of Plaintiffs' complaint. The "facts" listed
2 in Oil Companies' Statement of Undisputed Facts confirm that Oil Companies' motion turns on the
3 form and substance of Plaintiffs' complaint: the majority are quotes or re-characterizations of
4 Plaintiffs' complaint and the contents therein. As explained below, Oil Companies' re-
5 characterizations of Plaintiffs' complaint do not constitute "facts" for purposes of a Statement of
6 Undisputed Material Facts and are wholly inappropriate.

7 Plaintiffs object generally to Oil Companies' Separate Statement of Undisputed Material
8 Facts on the following two grounds. These objections are referred to as "Paragraph (A)" and
9 "Paragraph (B)," respectively, in Plaintiffs' specific responses to Oil Companies' purported
10 undisputed material facts in the table below.

11 A. Nearly every "Undisputed Material Fact" ("UMF") proffered by Oil Companies—
12 twenty of their twenty-five UMFs—quotes or incorrectly re-characterizes public
13 regulations, Plaintiffs' complaint and petition, or other court documents in this action.
14 (See Oil Co. UMF 1, 6-25.) Plaintiffs object to these twenty UMFs as improper
15 because they fail to constitute "facts" appropriate for a Statement of Undisputed
16 Facts. The contents of Plaintiffs' complaint and petition, for example, and Oil
17 Companies' incorrect and misleading interpretation of these documents and the nature
18 of Plaintiffs' allegations, cannot reasonably be construed as "facts" or "evidence"
19 appropriate for recasting in a Statement of Undisputed Material Facts. Rather, all of
20 the documents relied upon for Oil Companies' UMFs 1 and 6-25 speak for
21 themselves as matters of law and/or as court documents. To the extent Oil Companies
22 re-characterize court documents in their UMFs, Plaintiffs object to these
23 characterizations as vague, ambiguous, misleading and argumentative assertions that
24 cannot be construed as factual assertions, and that properly belong only in Oil
25 Companies' memorandum in support of their motion.

26 B. Four of the remaining five UMF of Oil Companies' 25 UMF are assertions of fact
27 that relate to the merits of Plaintiffs' APA claim and are irrelevant. (See Oil Co. UMF
28 2-5.) These UMFs describe, for example, the context in which DOGGR's regulations

were promulgated, DOGGR's purpose in promulgating the regulations, and DOGGR's communications with EPA prior to promulgating the regulations. However, the merits of Plaintiffs' APA claim, which invokes questions about the intent, effect and justification for those regulations, have not been raised or briefed by Oil Companies or any other party in this proceeding at this time, and are not currently before the Court for its review. They will be ready for adjudication only after the record is certified and lodged before the Court and the merits briefs have been filed. Facts regarding the nature or purpose of DOGGR's regulations do not "make a difference in the disposition of the motion" at bar. (See Cal. Rules of Court Rule 3.1350.) These UMFs are irrelevant to and inappropriate in this summary adjudication proceeding.

Additional, specific responses to Oil Companies' purported Undisputed Material Facts are provided below.

<i>Undisputed Fact ("UF")</i>	<i>Energy Companies' Undisputed Material Facts and Supporting Evidence</i>	Plaintiffs' Response and Supporting Evidence
ISSUE 1 – THE FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF IS BARRED BECAUSE NO ACTUAL CONTROVERSY EXISTS		
UF No. 1	In California, Class II underground injection wells are regulated by DOGGR pursuant to a Memorandum of Agreement between DOGGR and the EPA Declaration of Matthew C. Wickersham ("Wickersham Decl."), Ex. A, [Code Fed. Regs., tit. 40, § 147.250].	Disputed. This paragraph sets forth a legal conclusion, not a fact. Plaintiffs refer this Court to Code Fed. Regs., tit. 40, § 147.250, which speaks for itself. See also Paragraph (A), <i>supra</i> .
UF No. 2	Recently, the EPA has raised questions regarding DOGGR's administration of the Underground Injection Control program Wickersham Decl., Ex. B [3/2/15 CalEPA Memo. at pp. 2-3]	Disputed. Plaintiffs dispute the relevance of this UMF, see Paragraph (B), <i>supra</i> . Plaintiffs also dispute Oil Companies' characterization of the March 2, 2015 CalEPA memo and object to the use of the word "recent" as vague and ambiguous. EPA identified legal violations in

		DOGGR's Class II UIC program in 2011, over five years ago. Wickersham Decl., Ex. B [3/2/15 CalEPA Memo. at pp. 2-3]
UF No. 3	Following numerous meetings and sustained dialogue with the EPA, DOGGR formally responded to the EPA's audit on February 6, 2015 Wickersham Decl., Ex. C [2/6/15 DOGGR Ltr.].	Disputed. Plaintiffs dispute the relevance of this UMF, see Paragraph (B), <i>supra</i> . Plaintiffs also object to Oil Companies' phrase "numerous meetings and sustained dialogue" in this paragraph as vague and ambiguous. DOGGR transmitted a letter to EPA on February 6, 2015 in response to EPA's concerns regarding the legal non-compliance of DOGGR's Class II UIC program. The evidence cited by Oil Companies does not support the Undisputed Material Fact ("UMF") as written.
UF No. 4	Among other actions, DOGGR proposed to "initiate rulemaking to establish a regulatory compliance schedule to eliminate Class II injection into undisputedly non-exempt aquifers statewide." Wickersham Decl., Ex. C [2/6/15 DOGGR Ltr.].	Disputed. Plaintiffs dispute the relevance of this UMF, see Paragraph (B), <i>supra</i> . Plaintiffs also dispute this paragraph to the extent Oil Companies purport to characterize the nature and legal effect of DOGGR's regulations at issue in this case, DOGGR's regulations do not constitute a regulatory compliance schedule that eliminates Class II injection into undisputedly non-exempt aquifers statewide. Under the challenged regulations, injection into non-exempt aquifers is allowed to continue until February 15, 2017 or beyond. DOGGR's regulations also fail to set a shut-down date for "Category 3 wells: Class II water disposal and EOR wells that are inside the surface boundaries of exempted aquifers, but that may nevertheless be injecting into a zone not exempted by the primacy agreement." To the extent this paragraph purports only to quote DOGGR's February 6, 2015 letter to EPA, Plaintiffs do not dispute it. Evidence: Wickersham Decl., Ex. C [2/6/15 DOGGR Ltr. p. 4]

UF No. 5	DOGGR's rulemaking came to fruition with the promulgation of the emergency Aquifer Exemption Compliance Schedule Regulations on April 1, 2015. Wickersham Decl., Ex. D [4/2/15 Press Release].	Disputed. Plaintiffs object to the phrase "came to fruition" in this paragraph as vague and ambiguous. DOGGR's regulations are now in effect. Plaintiffs otherwise refer this Court to the text of DOGGR's regulations, which speak for themselves. (See, e.g., Cal. Code Regs. tit. 14, § 1779.1.)
UF No. 6	On May 7, 2015, Petitioners filed their Complaint for Declaratory and Injunctive Relief and verified Petition for Writ of Mandate ("Petition") with two causes of action intended to nullify the Aquifer Exemption Compliance Schedule Regulations. Wickersham Decl., Ex. E [Petition].	Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i> . Plaintiffs also dispute Oil Companies' characterization of Plaintiffs' complaint and the allegations and relief requested therein. Plaintiffs filed their Complaint in this action on May 7, 2015. Plaintiffs refer this Court to Plaintiffs' complaint, which speaks for itself.
UF No. 7	Petitioners are seeking declaratory relief under the California Administrative Procedure Act based on allegations that the Aquifer Exemption Compliance Schedule Regulations were not justified by a true emergency Wickersham Decl., Ex. E [Petition at pp. 13:18-15:3].	Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i> . Plaintiffs also dispute Oil Companies' characterization of Plaintiffs' complaint and the allegations and relief requested therein. Plaintiffs refer this Court to Plaintiffs' complaint, which speaks for itself.
UF No. 8	Petitioners have requested a writ of mandate "ordering DOGGR to take all actions necessary and available to it to immediately meet its non-discretionary duty to prohibit illegal injection of wastewater into protected aquifers." Wickersham Decl., Ex. E [Petition] at pp. 13:18-15:3.	Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i> . Plaintiffs otherwise refer this Court to Plaintiffs' complaint, which speaks for itself.
UF No. 9	The Petition recognizes that an "actual controversy" is an essential element of the declaratory relief cause of action. Wickersham Decl., Ex. E [Petition]	Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i> . Plaintiffs also dispute Oil Companies' characterization of Plaintiffs' complaint and the allegations and relief requested

	at pp. 14:17-18.	therein. Plaintiffs refer this Court to the Plaintiffs' complaint, which speaks for itself.
UF No. 10	<p>Regarding the first cause of action, Petitioners allege that DOGGR has violated the Administrative Procedure Act "by employing regulatory emergency powers to allow admittedly illegal injection." Wickersham Decl., Ex. E [Petition] at pp. 2:22-23</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies' characterization of Plaintiffs' complaint and the allegations requested therein. Plaintiffs refer this Court to the Plaintiffs' complaint, which speaks for itself.</p>
UF No. 11	<p>Petitioners allege that "[t]he true emergency is the ongoing contamination of California's underground supply of water [and that] DOGGR has a nondiscretionary duty and legal authority to prevent [the alleged contamination]."</p> <p>Wickersham Decl., Ex. E [Petition] at pp. 2:25-26, 14:27-15:3.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies' characterization of Plaintiffs' complaint and the allegations and relief requested therein. Plaintiffs refer this Court to the Plaintiffs' complaint, which speaks for itself.</p>
UF No. 12	<p>Based on the alleged "true emergency," Petitioners seek a prohibition of "further illegal contamination under the guise of DOGGR's sham 'emergency' regulatory scheme."</p> <p>Wickersham Decl., Ex. E [Petition] at pp. 14:17-18.</p> <p>The Energy Companies deny these</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies' characterization of Plaintiffs' complaint and the allegations and relief requested therein. Plaintiffs refer this Court to the Plaintiffs' complaint, which speaks for itself.</p>

	allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.	
UF No. 13	<p>Petitioners have asked this Court to “vacate the emergency regulations” because “DOGGR continues to fail in implementing its regulatory duties.”</p> <p>Wickersham Decl., Ex. E [Petition] at pp. 3:4-6.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies’ characterization of Plaintiffs’ complaint and the allegations and relief requested therein. Plaintiffs refer this Court to the Plaintiffs’ complaint, which speaks for itself.</p>
UF No. 14	<p>To justify declaratory relief, Petitioners allege that they will be “irreparably harm[ed]” because of “DOGGR’s failure to enforce and comply with the law and because of the ensuing environmental damage caused by DOGGR’s illegal authorization of oil wastewater injection into protected aquifers.”</p> <p>Wickersham Decl., Ex. E [Petition] at pp. 14:27-15:3.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies’ characterization of Plaintiffs’ complaint and the allegations and relief requested therein. Plaintiffs refer this Court to the Plaintiffs’ complaint, which speaks for itself.</p>
UF No. 15	<p>Petitioners explained at the hearing on the Motion for Preliminary Injunction that the “first cause of action” for declaratory relief is about the “legal framework for review,” which is alleged to be “review first before allowing anything to go into a</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies’ characterization of Plaintiffs’ position in this paragraph. To the extent Oil Companies quote the Motion for</p>

	<p>protected aquifer.”</p> <p>Wickersham Decl., Ex. F [Motion for Preliminary Injunction Hearing Transcript] at p. 11:13-17.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	<p>Preliminary Injunction Hearing Transcript, Plaintiffs refer this Court to the transcript, which speaks for itself. To the extent Oil Companies purport to characterize Plaintiffs’ claim for declaratory relief or petition for writ of mandate, Plaintiffs refer this Court to Plaintiffs’ complaint, which speaks for itself.</p>
UF No. 16	<p>At the hearing on the Motion for Preliminary Injunction, Petitioners described the “crux of the case” as Petitioners’ “concern that injections are occurring into protected aquifers where no exemptions have been obtained.”</p> <p>Wickersham Decl., Ex. F [Motion for Preliminary Injunction Hearing Transcript] at p. 13:15-18.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies’ characterization of Plaintiffs’ position in this paragraph. To the extent Oil Companies purport to quote the Motion for Preliminary Injunction Hearing Transcript, Plaintiffs refer this Court to the transcript, which speaks for itself. To the extent Oil Companies purport to characterize Plaintiffs’ claim for declaratory relief or petition for writ of mandate, Plaintiffs refer this Court to Plaintiffs’ complaint, which speaks for itself.</p>
UF No. 17	<p>At the Demurrer hearing, Petitioners stated that the declaratory relief cause of action “could be a cause of action for our second claim” for mandamus relief.</p> <p>Wickersham Decl., Ex. G [Demurrer Hearing Transcript at p. 67:21-22.]</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies’ characterization of Plaintiffs’ position in this paragraph. To the extent Oil Companies purport to quote the Motion for Preliminary Injunction Hearing Transcript, Plaintiffs refer this Court to the transcript, which speaks for itself. To the extent Oil Companies purport to characterize Plaintiffs’ claim for declaratory relief or petition for writ of mandate, Plaintiffs refer this Court to Plaintiffs’ complaint, which speaks for itself.</p>
UF No. 18	<p>At the hearing on the motion for</p>	<p>Disputed. Plaintiffs object to this</p>

	<p>Preliminary Injunction, Petitioners raised the prospect that “emergency findings themselves” were insufficient to justify the Aquifer Exemption Compliance Schedule Regulations.”</p> <p>Wickersham Decl., Ex. F [Motion for Preliminary Injunction Hearing Transcript] at p. 18:16-17.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	<p>paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies’ characterization of Plaintiffs’ position in this paragraph. To the extent Oil Companies purport to quote the Motion for Preliminary Injunction Hearing Transcript, Plaintiffs refer this Court to the transcript, which speaks for itself. To the extent Oil Companies purport to characterize Plaintiffs’ claim for declaratory relief or petition for writ of mandate, Plaintiffs refer this Court to Plaintiffs’ complaint, which speaks for itself.</p>
UF No. 19	<p>Petitioners have challenged DOGGR’s findings that an immediate cessation of underground injection activities in California would (1) cause as “abrupt disruption” to the oil industry in California and (2) jeopardize the federal government’s ongoing approval of the State’s UIC Program.</p> <p>Wickersham Decl., Ex. E [Petition] at pp.12:22-28, 13:12-14</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies’ characterization of Plaintiffs’ position in this paragraph. To the extent Oil Companies purport to characterize Plaintiffs’ claim for declaratory relief or petition for writ of mandate, Plaintiffs refer this Court to Plaintiffs’ complaint, which speaks for itself.</p>
UF No. 20	<p>Petitioners allege that neither of DOGGR’s emergency justifications “addresses or concerns public welfare, health or safety.”</p> <p>Wickersham Decl., Ex. E [Petition] at pp.12:27-28.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs refer this Court to Plaintiffs’ complaint, which speaks for itself.</p>

	purportedly relied upon by Petitioners to support their cause of action.	
UF No. 21	<p>The Court ruled in the order denying Petitioners' Motion for Preliminary Injunction that "enforcement via the emergency regulations ... appears likely to minimize collateral harm to the public, including the impact on California's economy of an immediate, across-the-board shut-down of injection wells."</p> <p>Wickersham Decl., Ex. H [Order Denying Motion for Preliminary Injunction] at p. 3.</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also object to this paragraph as irrelevant. Plaintiffs refer this Court to its Order Denying Motion for Preliminary Injunction, which speaks for itself.</p>
UF No. 22	<p>The Court ruled in the order denying Petitioners' Motion for Preliminary Injunction that "the threat that the EPA will rescind California's primacy ... could result in less effective enforcement in the near-term."</p> <p>Wickersham Decl., Ex. H [Order Denying Motion for Preliminary Injunction] at p. 3.</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also dispute Oil Companies' characterization of this Court's order, and the relevance of this paragraph. Plaintiffs refer this Court to the Order Denying Motion for Preliminary Injunction, which speaks for itself.</p>
UF No. 23	<p>At the hearing on the Motion for Preliminary Injunction, Petitioners argued that their "position is the real public health emergency is the drought and the harm caused by the regulations allowing continued contamination of these underground sources of drinking water."</p> <p>Wickersham Decl., Ex. F [Motion for Preliminary Injunction Hearing Transcript] at p. 18:21-25.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	<p>Disputed. Plaintiffs object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs also object to Oil Companies' characterization of the Motion for Preliminary Injunction Hearing Transcript, and the relevance of this paragraph. Plaintiffs refer this Court to the transcript, which speaks for itself.</p>

1 2 3 4 5 6 7 8 9 10 11 12	UF No. 24	<p>At the hearing on the Motion for Preliminary Injunction, Petitioners claimed that “notwithstanding any deference the Court gives to the finding of the emergency regulations, the regulations violate the [SDWA] ... and that fundamental flaw means regulations can be struck down no matter what.”</p> <p>Wickersham Decl., Ex. F [Motion for Preliminary Injunction Hearing Transcript] at p. 20:8-12.</p> <p>The Energy Companies deny these allegations made in the Petition, but offer them purely to identify facts purportedly relied upon by Petitioners to support their cause of action.</p>	<p>Disputed. Plaintiffs object to this paragraph as inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs otherwise refer this Court to the Motion for Preliminary Injunction Hearing Transcript, which speaks for itself.</p>
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	UF No. 25	<p>Petitioners have proposed the possibility of bifurcated records on the two causes of action.</p> <p>Wickersham Decl., Ex. I [Case Management Statement] at pp.3-4.</p>	<p>Disputed. Plaintiffs object to this paragraph as irrelevant. Plaintiffs also object to this paragraph as an inappropriate UMF, as explained in Paragraph (A), <i>supra</i>. Plaintiffs further dispute Oil Companies’ characterization of Plaintiffs’ position on the issue of the record in this action, and otherwise refer this Court to the Joint Case Management Statements filed on Dec. 30, 2015 and Jan. 29, 2016, which reflect Plaintiffs’ position and speak for themselves.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED FACTS		
<i>Undisputed Fact No.</i>	<i>Energy Companies' Response and Supporting Evidence</i>	<i>Plaintiffs Undisputed Material Facts and Supporting Evidence</i>
UF No. 26		DOGGR's regulations are now in effect. (See, e.g., Cal. Code Regs. tit. 14, § 1779.1.)

Respectfully submitted,

DATED: February 18, 2015



Tamara T. Zakim (State Bar No. 288912)
William B. Rostov (State Bar No. 184528)
EARTHJUSTICE
50 California Street, Ste. 500
San Francisco, CA 94111
Tel: (415) 217-2000
Fax: (415) 217-2040
wrostov@earthjustice.org
tzakim@earthjustice.org

Attorneys for Plaintiffs/Petitioners
Center for Biological Diversity and Sierra Club

Hollin N. Kretzmann (State Bar No. 290054)
1212 Broadway, Ste. 800
Oakland, CA 94612
Tel: (510) 844-7133
Fax: (510) 844-7150
hkretzmann@biologicaldiversity.org

Attorney for Plaintiff/Petitioner
Center for Biological Diversity

1 **PROOF OF SERVICE**

2 I am a citizen of the United States of America and a resident of the City and County of San
3 Francisco; I am over the age of 18 years and not a party to the within entitled action; my business
4 address is 50 California Street, Suite 500, San Francisco, California.

5 I hereby certify that on February 18, 2016, I served by electronic mail one true copy of the
6 document herein on the persons named below:

7
8 Baine P. Kerr
9 Deputy Attorney General
10 California Department of Justice
11 300 S. Spring Street, Suite 1702
12 Los Angeles, CA 90013
13 (213) 620-2210
14 Email: baine.kerr@doj.ca.gov

Craig Moyer
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064
Email: cmoyer@manatt.com

12 Jeffrey D. Dintzer
13 Matthew C. Wickersham
14 Nathaniel P. Johnson
15 Gibson, Dunn & Crutcher LLP
16 333 South Grand Avenue, 47th Floor
17 Los Angeles, CA 90071-3197
18 Email: jdintzer@gibsondunn.com
19 Email: mwickersham@gibsondunn.com

Blaine I. Green
Pillsbury Winthrop Shaw Pitman LLP
Four Embarcadero Center, 22nd Floor
P.O. Box 2824
San Francisco, CA 94126-2824
Email: blaine.green@pillsburylaw.com

16 I certify under penalty of perjury that the foregoing is true and correct. Executed on
17 February 18, 2016 in San Francisco, California.

18
19 
20 John W. Wall
21
22
23
24
25
26
27
28